



WHEFA ANNOUNCEMENT

Default Waivers and Payment Deferrals

By: Jennifer Powers, Quarles & Brady LLP

In light of the negative economic impact of COVID-19 and the uncertainty of how long it will last, borrowers of tax-exempt bond proceeds may find themselves in the position of requesting their lenders to temporarily waive certain financial covenants contained in tax-exempt financing documents or to defer certain debt service payments on the related tax-exempt bonds. Borrowers and banks, however, should keep in mind that the deferral of debt service payments on tax-exempt bonds could have an adverse impact on the tax-exempt status of such bonds. Additionally, although the waiver of financial covenants by a lender may not, in and of itself, adversely affect the tax-exempt status of the related bonds, if other changes or agreements are also made to the bond documents, including a related covenant agreement between a borrower and a bank, such changes or agreements on a cumulative basis may have an adverse impact on the tax-exempt status of related bonds. This does not mean that such waivers, deferrals and/or changes are not allowed. It means that waivers, deferrals and changes need to be reviewed by bond counsel to determine whether one or more will result in a reissuance of the related bonds that would require extra steps to be taken in connection with such waivers, deferrals and/or changes in order to preserve the tax-exempt status of the bonds. Remember to consult with counsel familiar with federal tax-exempt bond requirements prior to obtaining waivers of payment or financial covenants or making other changes to documents related to a tax-exempt bond financing.

Bond Documents and Force Majeure Event

With respect to Loan Agreements and Bond Trust Indentures in a bond financing, such types of financing documents do not contain Force Majeure clauses allowing non-performance or non-payment in the event of an occurrence of a force majeure event. Such provisions are common in contracts such as purchase and sale agreements for the provision of goods and services, but not in financing documents.

For more information please contact:

DENNIS P. REILLY | EXECUTIVE DIRECTOR | INFO@WHEFA.COM

WWW.WHEFA.COM | 18000 WEST SARAH LANE, SUITE 300, BROOKFIELD, WI 53045 | 262.792.0466
